

107 FERC ¶ 61, 186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Florida Power & Light Company-
New England Division

Docket No. ER04-714-000

Bangor Hydro-Electric Company, et al.

Docket Nos. ER04-157-000
and ER04-157-001

ORDER ACCEPTING AND SUSPENDING FILING, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING
PROCEEDINGS IN PART

(Issued May 26, 2004)

1. In this order, we accept the Local Network Service (LNS) Tariff filed on April 1, 2004 of Florida Power & Light Company-New England Division (FPL-NED), suspend it for a nominal period, to become effective on the later of June 1, 2004, or the date on which the transfer of the Seabrook Transmission Substation from FPL Energy Seabrook, LLC (FPLE Seabrook) to FPL-NED becomes official, subject to refund. We also establish hearing and settlement judge procedures. This action benefits customers because it provides the parties with a forum in which to resolve their disputes over the LNS Tariff.

Background

2. Seabrook Nuclear Generating Station (Seabrook Station) is a nuclear generating facility located in Seabrook, New Hampshire. FPLE Seabrook owns an 88.22889 percent undivided interest in Seabrook Station and in the interconnecting transmission facilities (Seabrook Transmission Substation) that connect it to the New England Power Pool (NEPOOL) transmission system. The Seabrook Transmission Substation is an important part of the wholesale transmission system in New England in that it ties together three major 345 kV transmission lines in NEPOOL, including one of the major North-South wholesale transmission interfaces in New England.

3. FPLE Seabrook acquired the Seabrook Station and Seabrook Transmission Substation on November 1, 2002. On July 7, 2003, FPLE Seabrook and its affiliate, Florida Power and Light Company (FPL), requested authorization for an intra-corporate transfer of FPLE Seabrook's 88.22889 percent undivided interest in the Seabrook

Transmission Substation to FPL-NED, a new division of FPL. FPL states that the transfer was designed to place FPL's acquired interest in the substation on the same footing that the substation had before the acquisition.

4. Since FPLE Seabrook is a merchant generator and a member of the Generation sector, the NEPOOL Open Access Transmission Tariff (NEPOOL Tariff) does not allow FPL to recover, through a local network service rate, the costs to own, operate, and maintain certain Seabrook Transmission facilities expenses. Recovery of such costs under the NEPOOL Tariff is limited to entities designated as Transmission Providers or certain Transmission Customers. On September 10, 2003, the Commission authorized the transfer of the Seabrook Transmission Substation, subject to FPL resolving jurisdictional issues and obtaining approval from the New Hampshire Public Utilities Commission (New Hampshire Commission). The Commission found that the transfer of these facilities did not have an adverse impact upon competition, rates, or regulation in the region.¹ The New Hampshire Commission proceeding on this matter had not concluded at the time FPL-NED filed its LNS Tariff, but has since concluded.

5. FPL-NED also applied for membership in NEPOOL as a Transmission Provider. The NEPOOL Participants Committee (Participants Committee) deemed FPL-NED the owner of an 88.22889 percent undivided interest in the Seabrook Transmission Substation as of October 1, 2003, that FPL-NED be considered a Transmission Provider as of the same date, and that FPL-NED be entitled to receive recovery of FPL-NED's Annual Transmission Revenue Requirements (ATRR) under NEPOOL. These decisions were appealed by the Northeast Utilities Service Company (NUSCO), and, at the time of FPL-NED's filing, the NEPOOL Review Board had not acted on this appeal. On May 21, 2004, the NEPOOL Review Board granted the appeal and remanded the matter to the Participants Committee for further review.

Filing

6. FPL-NED requests that this LNS Tariff become effective on the later of June 1, 2004 (sixty days from the date of the instant filing), or the date on which the transfer of the Seabrook Transmission Substation from FPLE Seabrook to FPL-NED becomes official. FPL-NED stated that it expects that the New Hampshire Commission

¹ FPL Energy Seabrook LLC and Florida Power & Light Company, 104 FERC ¶ 61,258 (September 10, 2003).

proceeding will conclude on or about June 1, 2004, and that “the asset transfer will take place immediately thereafter.”²

7. FPL-NED has attempted to produce cost statements that meet the requirements contained in the Commission’s Rules of Practice and Procedure in section 35.13.³ FPL-NED requests waiver of the Commission’s filing requirements in instances where information is insufficient, and that the Commission consider the contents of this filing to satisfy all requirements. FPL-NED also requests that if the Commission determines to suspend rates, such suspension only be for a nominal period since there are no current rates in effect.

8. FPL-NED’s LNS Tariff is based upon the Commission-approved LNS Tariff of Central Maine Power Company (Central Maine) that is currently in effect. FPL-NED states that it has made certain changes to the Central Maine LNS Tariff to reflect operating differences of the companies.

9. FPL-NED describes the formula rate that sets forth the details for determining each year’s LNS Annual Transmission Revenue Requirements (LNS-ATRR). The LNS-ATRR is to be an annual formula rate calculation, effective for an initial term commencing on the proposed effective date of June 1, 2004, and ending on May 31, 2005. The initial billing will be based on cost data from October 1, 2003 through December 31, 2003, reflecting costs incurred by FPLE Seabrook while functioning in the same manner, and also based on the capital structure and cost of capital of FPL. The LNS-ATRR will be updated each June 1, based on costs incurred during the previous calendar year. Until the time when FPLE Seabrook has completed the transfer of the transmission facilities to FPL-NED, the LNS-ATRR shall continue to be based on FPLE Seabrook’s percentage ownership share of the cost incurred by the Seabrook Station for owning, operating, and maintaining the transmission facilities located in NEPOOL.

10. FPL-NED states that the formula is designed to work in conjunction with the NEPOOL Regional Network Service Tariff (RNS Tariff), and will ensure that the total annual revenue requirements are recovered. The rate includes a monthly credit applied to those monthly charges otherwise assessed by FPL-NED under its LNS Tariff reflecting revenues FPL-NED receives each month from ISO New England (ISO-NE) associated with FPL-NED’s share of the distribution of revenues collected by ISO-NE for

² Filing at p.3

³ 18 C.F.R. § 35.13 (2003).

administering transmission service over Pool Transmission Facilities (PTF) under the NEPOOL Tariff. The formula incorporates a forecast of monthly revenues being reconciled with actual monthly revenues received in subsequent billing months.

11. The formula rate incorporates a Return on Common Equity (ROE) component of 12.80 percent. Since FPL-NED will not have its own capital structure, it will base its ROE on the capital structure of FPL's total cost of its long-term outstanding debt, preferred stock and common stock issued as of the end of each calendar year. FPL-NED states that this method is appropriate because FPL-NED will rely on FPL for any capital funding requirements. FPL-NED states that it has proposed 12.80 percent as the ROE based on the ROE requested by the NEPOOL Transmission Owners in their filing submitted in Docket No. ER04-157-000 on November 4, 2003,⁴ and is based on a proxy group comprised of publicly traded New England Transmission Owners. FPL-NED believes that the region-wide ROE should apply to its transmission in the proposed LNS Tariff as well as future cost recovery under the NEPOOL RNS Tariff in both the RNS and LNS transmission rates, putting it in the same position as all other transmission facilities used to provide transmission in New England. This includes the 50 basis point adder from joining an RTO and the 100 basis point adder attributable to new transmission investment for the ROE component of the RNS Tariff. FPL-NED also requests the ROE adders consistent with the Commission's ruling in Docket No. ER04-157-000.

12. The formula rate for the LNS Tariff also utilizes a depreciation rate of 3.12 percent. This is based upon the weighted average depreciation rate of the former owners of the Seabrook Transmission Substation that submit a Form No. 1. FPL-NED prepared a Depreciation study which produced a depreciation rate of 3.59 percent. FPL-NED is not seeking to use this higher depreciation rate in the formula, but is providing the study as evidence that the continuation of the current rate is reasonable.

Notice of Filing and Responsive Pleadings

13. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 20,003 (2004), with comments, protests, and interventions due on or before April 22, 2004. NUSCO and Central Maine filed motions to intervene and protests. Connecticut Department of Public Utility Control (CT DPUC) filed a notice of intervention and protest. United Illuminating Company, Bangor Hydro-Electric Company, and National Grid USA filed motions to intervene. Vermont Electric Power Company (VELCO) filed

⁴ ISO New England Inc., 106 FERC ¶ 61,280 (March 24, 2004) (ISO New England).

a motion to intervene and protest out-of-time. The NEPOOL Participants Committee filed a motion to intervene out-of-time and comments. On May 7, 2004, FPL-NED filed an answer to the protests. On May 17, 2004, NUSCO filed an answer to NEPOOL Participants Committee's comments and to FPL-NED's answer. On May 19, 2004, FPL-NED filed a motion to lodge a May 7, 2004 New Hampshire Commission order. On May 21, 2004, Central Maine filed an answer to the submission of the NEPOOL Participants Committee and to FPL-NED's answer. On May 24, 2004, NUSCO filed a motion to lodge the May 21, 2004 decision of the NEPOOL Review Board. Also on May 24, 2004, the NEPOOL Participants Committee filed supplemental comments.

14. NUSCO, on behalf of the NU Operating Companies,⁵ protests FPL-NED's LNS filing and asserts that generator related step-up transformers (GSUs) should not be included in the transmission rate base used to derive FPL-NED's transmission rates. NUSCO and Central Maine both assert that this is a fictional arrangement, intended to shift costs away from a generator. Central Maine states that the LNS tariff is a fiction because no entity will take service under the agreement and FPL has no local network in New England. Central Maine questions whether FPL-NED's facilities can be considered a Local Network. They argue that because the non-PTF facilities that FPL-NED claims are associated with the Seabrook Substation are generator leads, under the proposed tariff, the only customer of FPL-NED would be FPLE Seabrook, its merchant generator affiliate and this is a fictional arrangement designed to transfer the costs of the facilities and service to real transmission ratepayers.

15. NUSCO states that FPL-NED's cost recovery proposal does not comply with the NEPOOL Tariff because it is questionable whether FPL-NED's facilities should be considered a Local Network.⁶ NUSCO argues that the non-PTF facilities that FPL-NED claims are associated with the Seabrook Substation are GSU's and related generation facilities, so there can never be legitimate transmission transactions or customers under the proposed tariff. NUSCO argues that FPL-NED manufactures a customer, which is FPLE Seabrook, the merchant generator. Also, NUSCO argues that FPLE Seabrook does not take RNS under the NEPOOL Tariff and, accordingly, does not have Network Load.

⁵ The NU Operating Companies are: the Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

⁶ Under the terms of the NEPOOL Arrangements, an entity must meet two basic requirements for ATRR: it must be a Local Network Service Provider and it must have Network Load.

Central Maine concurs that FPL-NED's LNS Tariff filing is inconsistent with the terms and conditions of the Restated NEPOOL Agreement and the NEPOOL RNS Tariff.

16. NUSCO further argues that FPLE Seabrook should not be allowed to recover expenses under the 1973 Seabrook Transmission Support Agreement (TSA). NUSCO points to pre-existing contractual obligations to which FPLE Seabrook agreed to as part of the purchase of the Seabrook Station. NUSCO states that FPL-NED was created solely to serve as a vehicle to recover the payment obligations that were undertaken with FPLE Seabrook's purchase of the majority interest in the Seabrook Generating Station and acceptance of the obligations under the TSA. NUSCO argues that the FPLE Seabrook investment should be recovered through the sales of power at market based rates.

17. Central Maine states that FPL-NED's filing is premature since issues were still pending before the NEPOOL Review Board and New Hampshire Commission at the time of FPL-NED's filing. Specifically, Central Maine argues that FPL's LNS tariff is an integral part of the FPLE Seabrook cost recovery strategy and NEPOOL's actions relating to the cost recovery request are under appeal. In addition, Central Maine argues that FPL will be unable to provide any service under the LNS tariff without approval from the New Hampshire Commission to act as a public utility in New Hampshire.

18. CT DPUC protests the filing and requests that the Commission examine whether FPL-NED's competitive generator's transmission interconnection facilities constitute LNS facilities eligible to collect cost-of-service rates. CT DPUC states that it is not apparent from FPL-NED's filing that the interconnection facilities qualify as LNS facilities and it is not apparent that these facilities actually serve LNS customers. Also, CT DPUC believes that costs associated with the interconnection facilities should be recovered through sales of power from the competitive generation facility rather than from regulated transmission customers. In addition, the CT DPUC is concerned with FPL's request for a 12.8 percent ROE and basis points adders.

19. VELCO's protest essentially articulates the shifting cost argument already made. VELCO states that FPL-NED would replace the simplicity of treating the Seabrook Substation as the generator load that it is and recovering the associated costs as part of the rates that it charges for power sales, by interposing Non-PTF between the power plant in which its affiliate owns a majority stake and the transmission system that is needed to deliver the output of that plant, and then providing service over this facility.

20. In their initial comments, the NEPOOL Participants Committee state that both NUSCO and Central Maine request relief from the Commission that would effectively reverse actions of the NEPOOL Participants Committee. The Participants Committee

intervenes to oppose that aspect of relief requested by NUSCO and Central Maine. The Participants Committee states that it took various actions approving the request of FPL and FPLE that FPL-NED be deemed the owner of the Seabrook substation transmission facilities and eligible to recover its transmission-related Seabrook costs through the NEPOOL arrangements. The Participants Committee states that NUSCO's appeal, with Central Maine intervening, is pending before the Review Board, which is an alternative dispute resolution mechanism within NEPOOL. The Participants Committee states that the issue raised by NUSCO and Central Maine is not properly before the Commission in this proceeding and ask that the Commission deny NUSCO and Central Maine the relief they seek on this issue.

21. The NEPOOL Participants Committee supplemented their comments to inform the Commission of the NEPOOL Review Board decision, which granted the appeal and recommended that the Participants Committee reconsider the matter.

22. FPL-NED addresses ATTR recovery in its answer and states that it is following the process as prescribed by NEPOOL and ISO-NE, and that the Protestors' arguments are therefore not relevant to this proceeding. Regarding the Protestors' cost-shifting argument, FPL-NED states that the former owners of the Seabrook Nuclear Station recovered the same costs through the ISO-NE OATT in the past, and the co-owners of the Seabrook Nuclear Station are recovering them today. FPL-NED also states that the Protestors do not raise any material issues regarding the just and reasonableness of the LNS Tariff.

23. In response to the protests, FPL-NED clarifies that no generation step-up transformer facilities costs are included in the LNS Tariff and FPL-NED attached to its answer a diagram of the facilities located at the Seabrook Substation. FPL-NED argues that there is no reason for the commission to conduct an independent review of FPL-NED's ROE because FPL-NED is willing to accept whatever ROE results from the proceeding in Docket No. ER04-157-000 (where the Commission is considering a New England-wide ROE). Lastly, FPL-NED states that the New Hampshire Commission proceeding was resolved in a settlement dated April 16, 2004, and states that FPL will be a New Hampshire utility.

24. NUSCO responds to FPL-NED's answer by elaborating on its claim that FPL-NED's facilities cannot be considered a Local Network. NUSCO argues that the facilities identified by FPL-NED as non-PTF do not provide wholesale transmission service but instead enable Seabrook to receive station power. NUSCO also argues that the Commission must address the LNS Tariff in the context of FPL's overall cost recovery objective and proposal because they are inextricably linked.

25. FPL-NED moved to lodge the order of the New Hampshire Commission, which was issued on May 7, 2004. The order allows the transfer of the Seabrook Transmission Substation to go forward and approves FPL to become a New Hampshire utility.

26. Central Maine argues that despite the New Hampshire Commission order allowing FPL to become a New Hampshire utility, FPL's filing remains premature because issues are still pending before the NEPOOL Review Board. Central Maine generally agrees with the arguments presented in NUSCO's answer and asks that the Commission either reject FPL-NED's filing or set the rates at issue in this proceeding for hearing.

27. In NUSCO's motion to lodge the decision of the NEPOOL Review Board, NUSCO states that the Review Board found that the currently effective NEPOOL Open Access Tariff and the Restated NEPOOL Agreement terms do not permit FPL to recover certain Seabrook-related transmission costs and support payments.

28. The supplemental comments of the NEPOOL Participants Committee state that its action approving the FPLE request will not take effect due to the NEPOOL Review Board's decision granting the appeal. The Participants Committee states that it will consider the advisory recommendation of the Review Board to reconsider the matter.

Discussion

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene and notice of intervention, serve to make the entities that filed them parties to the proceeding. We accept the motions to intervene out-of-time of the NEPOOL Participants Committee and VELCO given their interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers of FPL-NED, NUSCO and Central Maine because they have provided information that assisted us in our decision-making process. In addition, we will grant FPL-NED's motion to lodge and NUSCO's motion to lodge. We will also accept the supplemental comments of the NEPOOL Participants Committee.

30. The Commission conditionally approved the transfer of Seabrook Transmission Station from FPLE Seabrook to FPL-NED upon the approval of the New Hampshire Commission. FPL-NED states that, on April 23, 2004, the New Hampshire Commission approved a settlement allowing this asset transfer to take place and an order was issued on May 7, 2004. In addition, FPL-NED requested the Participants Committee to deem it the owner of the Seabrook substation transmission facilities, and the party responsible for

supporting the costs or related transmission facilities. Although the Participants Committee approved the request, NUSCO appealed the Participants Committee's actions to the NEPOOL Review Board.

31. On May 21, 2004, the NEPOOL Review Board issued a decision granting NU's appeal of the Participants Committee's actions to permit FPL-NED to recover costs related to the Seabrook Station. The NEPOOL Review Board remanded the matter to the Participants Committee for further consideration and accordingly, the Participants Committee will have to decide upon FPL-NED's status as a transmission provider. As discussed below, the Commission accepts and suspends for a nominal period the LNS Tariff, to become thereafter effective subject to refund. Any charges collected pursuant to FPL-NED's Tariff thus will be subject to refund, should the ultimate decision go against FPL-NED.

32. FPL-NED describes the formula rate that sets forth the details for determining each year's LNS-ATRR. The Commission is unclear about various issues involving the formula rate calculation and the LNS Tariff itself, including, but not limited to: (1) the appropriate assignment of costs between generation and transmission, (2) deferred income taxes and investment tax credits associated with the transfer or corporate ownership, (3) allocation of administrative and general expenses, (4) annualization of cost inputs, and (5) the proposed capital structure and ROE component. Additionally, the applicability of the requested ROE component to both the LNS and RNS rates must be determined, as well as the base ROE and FPL-NED's eligibility for the 100 basis point adder. The Commission also needs to explore the propriety of FPL-NED's particular 2003 data formula inputs and its intended inputs for subsequent years. Accordingly the Commission sets these matters for hearing, as provided below (with the issue of the ROE component to be consolidated with the ongoing proceeding in Docket Nos. ER04-157-000 and ER04-157-001).

33. In Docket Nos. ER04-157-000 and ER04-157-001,⁷ the Commission suspended and set for hearing the requested region-wide base ROE and a 100 basis point adder attributable to new transmission investment, to be recovered in RTO-NE's transmission rates for RNS in New England. The Commission also found that the commitment to establish a regional transmission organization in New England (RTO-NE) and the transfer of day-to-day operational control of authority over transmission facilities to RTO-NE, warranted ROE Filers requested 50 basis point incentive adder to the ROE component.

⁷ See supra note 4.

34. In response to FPL-NED's request to be eligible for these benefits, the Commission finds that issues involving the FPL-NED ROE are more appropriately examined in conjunction with those of the other New England transmission owners in the ongoing hearing in Docket Nos. ER04-157-000 and ER04-157-001. Accordingly, we will consolidate this proceeding with respect to this issue only with Docket Nos. ER04-157-000 and ER04-157-001.

35. In response to FPL-NED's request to be eligible for the 50 basis point incentive adder, we will provide FPL-NED, consistent with our prior finding in Docket No. ER04-157-000, the 50 basis point adder, subject to the transfer of day-to-day operational control of FPL-NED's regional transmission facilities to RTO-NE.

36. FPL-NED's filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the LNS Tariff has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the LNS Tariff for filing, suspend it for a nominal period, to become effective on the later of June 1, 2004, or the date on which the transfer of the Seabrook Transmission Substation from FPLE Seabrook to FPL becomes official,⁸ subject to refund, and set it for hearing and settlement judge procedures.

37. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to reach a settlement before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁰ The settlement judge

⁸ FPL-NED states that the transfer of the Seabrook Transmission Substation cannot take place until after the New Hampshire Commission proceeding has concluded, which it expects will occur on or about June 1, 2004.

⁹ 18 C.F.R. § 358.603 (2003).

¹⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov- click on the Office of Administrative Law Judges).

shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussion or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The LNS Tariff is hereby accepted for filing, suspended for a nominal period, to become effective on the later of June 1, 2004, or the date on which the transfer of the Seabrook Transmission Substation from FPLE Seabrook to FPL becomes official, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the LNS Tariff. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall convene a conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussion, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission of the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene, within fifteen (15) days of the date of the presiding judge's designation, a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20246. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Docket No. ER04-714-000, with respect to the issue of the ROE component only, is hereby consolidated with Docket Nos. ER04-157-000 and ER04-157-001, as discussed in the body of this order. The presiding judge or settlement judge in the latter proceeding, as appropriate, shall determine the procedures best suited to accommodate consolidation.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.